

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SAVVIER, LP,

Plaintiff,

ORDER

v.

04-CV-1007S(F)

WONDERFULBUYS.COM,
LEENA, INC.,
GOOD WORLD CORPORATION and
VEDANT REJPUT,

Defendants.

This action has been referred to the undersigned, a Magistrate Judge of this court, for entry of a scheduling order, in accordance with Fed.R.Civ.P. 16 and Local R.Civ.P. 16.1. All parties should note significant amendments to Fed.R.Civ.P. 26 and 30 that require certain pretrial disclosures and affect the scope and conduct of any discovery in this case. (See attached summary.) By Local Rules adopted and effective May 1, 2003, this court has modified Rules 26, 30 and 34. See Local Rules of Civ.P. W.D.N.Y. 26, 30 and 34. Accordingly, the parties or their counsel should consult the Local Rules as amended.

Pursuant to Fed.R.Civ.P. 16, the following is directed:

Each party, including any party appearing for themselves without counsel, shall appear before the undersigned on **June 8, 2005 at 10:00 a.m.** at 428 U.S. Courthouse, 68 Court Street, Buffalo, New York for the purpose of entry of a case management order as required by Fed.R.Civ.P. 16(b).

As required by Fed.R.Civ.P. 26(f), the parties shall confer at least 21 days prior to the Rule 16(b) hearing as scheduled above for (1) the purposes set forth in Rule 26(f)(2) preparation of the required Proposed Discovery Plan, and (2) to propose to the

court a Case Management Order that will establish outside cut-off dates for the further progress of this case including:

- (a) Making all disclosures as required by Fed.R.Civ.P. 26(a)(1).
- (b) Motions to amend the pleadings or add parties.
- (c) Completion of all fact discovery.
- (d) Completion of all expert discovery, if any, by each party including strict compliance with Fed.R.Civ.P. 26(a)(2) regarding the identification and filing reports of testifying experts.
- (e) Motions to compel.
- (f) The filing of any dispositive motions.
- (g) The advisability of an early settlement conference. Please note that if a settlement conference is included in the order, the parties, trial counsel, and representatives with full settlement authority will be expected to attend.

Such proposed discovery plan and case management order shall, pursuant to Fed.R.Civ.P. 26(f), be submitted to the court in writing at least 14 days prior to the Rule 16(b) conference as herein provided. **Any failure by a party or the party's attorney to participate in good faith in the development and submission of a proposed discovery plan required by Rule 26(f) or this order may result in the award of expenses and attorney's fees to the other party caused by such failure.**

Fed.R.Civ.P. 37(g).

THE PARTIES ARE REQUESTED TO CONSIDER AND ARE ENCOURAGED TO ACT FAVORABLY ON THE ATTACHED CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE IN A CIVIL CASE PURSUANT TO TITLE 28 OF THE UNITED STATES CODE, SECTION 636(c). HOWEVER, NO SUBSTANTIVE ADVERSE CONSEQUENCES WILL RESULT SHOULD THE PARTIES ELECT NOT TO CONSENT. IF THE PARTIES WISH TO CONSENT, ALL PARTIES MUST EXECUTE THE CONSENT FORM AND RETURN IT TO THE CLERK OR THE UNDERSIGNED FOR PROCESSING.

The parties are also reminded of the availability of the voluntary Court Assisted Arbitration Program described in Local Rule of Civil Procedures 16.2. For information, contact the Arbitration Program Clerk at 585-613-4011.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

Dated: April 25, 2005
Buffalo, New York

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Rev 11/96

	Plaintiff,	____-CV-____
-v-		CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE JUDGE
	Defendant.	

In accordance with the provisions of 28 U.S.C. Section 636(c), the undersigned party or parties to the above-captioned civil matter hereby voluntarily consent to have a United States Magistrate Judge conduct any and all further proceedings in the case, including trial, and order the entry of final judgment. Any appeal from the judgment in this case shall be taken to the United States Court of Appeals for the Second Circuit.

<u>Signatures</u>	<u>Date</u>
_____ (plaintiff)	_____
_____ (defendant)	_____

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above-captioned matter be referred to United States Magistrate Judge _____ for all further proceedings and the entry of judgment in accordance with 28 U.S.C. §636(c) and foregoing consent of the parties.

_____ Date	_____ United States District Judge
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Summary of Rules of Civil Procedure Amendments
Effective December 1, 2000

- (1) Changes, effective December 1, 2000, apply to all pending cases and newly filed cases.
- (2) Rule 26(a)(1)(A) – (D) mandates voluntary disclosure of specific categories of information in all cases except those exempted under Rule 26(a)(1)(E), *e.g.*, social security appeals and prisoner civil rights cases, at or within 14 days after the conference between the parties required by Rule 26(f) to develop a written Discovery Plan, unless stipulated or ordered otherwise, or unless a party objects in the Discovery Plan.
- (3) Parties to confer as soon as practicable and at least 21 days prior to scheduled Rule 16(b) conference to consider claims and defenses, possible early settlement or resolution of case, to make or arrange for disclosures mandated by Rule 26(a)(1)(A) – (D), and to prepare for submission to the court a proposed Discovery Plan covering the matters set forth in Rule 26(f)(1) – (4). Such Discovery Plan must be submitted to the court, in writing, within 14 days after the conference required by Rule 26(f).
- (4) No discovery permitted before parties have conferred to propose a written Discovery Plan unless permitted by court order or by agreement of the parties. Rule 26(d).
- (5) Discovery at the request of a party is limited to a claim or defense. Discovery related to a matter relevant to subject matter of the action available only upon court order for good cause. Rule 26(b)(1).
- (6) Depositions are limited to one day of seven hours. Multiple parties on each side must coordinate depositions unless court authorizes additional deposition time. Rule 30(d)(2).
- (7) Interference with the conduct of a deposition by instructing a witness not to answer a question is sanctionable misconduct unless the instruction is to preserve a privilege or enforce a limitation under Rule 30(d)(4). Rule 30(d)(1) and (3). Objections must be stated concisely and in a non-argumentative and non-suggestive manner. Rule 30(d)(1).